

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Jose Servin, ) No. 16 B 39971  
                ) Park City, Illinois  
                ) 11:15 a.m.  
Debtor.         ) March 13, 2020

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtor: Ms. Tina Adams;

For Eagle Fence: Ms. Shelly DeRousse;

Court Reporter: Amy Doolin, CSR, RPR  
U.S. Courthouse  
219 South Dearborn  
Room 661  
Chicago, IL 60604.

1                   THE CLERK: Taking up this court's  
2 11:15 Chapter 7 set matters, Jose Servin, with  
3 related adversary proceeding.

4                   MS. ADAMS: Tina Adams for the  
5 plaintiff.

6                   MS. DeROUSSE: Good morning,  
7 Your Honor. Shelly DeRousse on behalf of Eagle  
8 Fence.

9                   THE COURT: I think you're the debtor,  
10 not the plaintiff.

11                  MS. ADAMS: Oh, okay.

12                  THE COURT: So I have three motions.  
13 The first is a continued motion from the debtor to  
14 enforce the discharge injunction. When this was  
15 presented, I said that I thought that the motion was  
16 well taken.

17                  What happened was that this was an  
18 adversary proceeding asserting that the debtor owed  
19 the creditor Eagle Fence Distributing a debt  
20 non-dischargeable under Section 523(a). The  
21 adversary proceeding was eventually settled, but  
22 there was never a judgment entered. Instead, the  
23 creditor entered into a settlement agreement with the  
24 debtor that called for payments over time, and the  
25 adversary proceeding was simply dismissed.

1                   According to the papers that I  
2 have, the debtor then made about 7,000, \$8,000 in  
3 payments and then stopped. So Eagle Fence began  
4 enforcing what it thought was a non-dischargeable  
5 debt in the state court. That caused Mr. Servin to  
6 come in on his motion to enforce the discharge  
7 injunction and assert that indeed the debt had been  
8 discharged.

9                   And I was sympathetic to that because  
10 indeed no judgment had been entered. There had to be  
11 a judgment. So under the circumstances, it seemed to  
12 me that this agreement that called itself a  
13 settlement agreement was an effort to reaffirm the  
14 debt - there's really no other way to look at it -  
15 and was invalid because of the fact that it was never  
16 filed with the court, and for other reasons it simply  
17 doesn't qualify. But I gave the movant the  
18 opportunity to demonstrate to me that this was a  
19 valid reaffirmation agreement.

20                  So now what I have is a response to  
21 the motion - there was no reply filed - and then two  
22 motions from Eagle Fence, one to reopen the adversary  
23 proceeding and the other to amend the dismissal order  
24 under Rule 60(b) (6) to say that the debt is  
25 non-dischargeable. That is something that I assume

1 the debtor opposes.

2 MS. ADAMS: Yes, I would assume  
3 so.

4 THE COURT: I'm sorry?

5 MS. ADAMS: Yes.

6 THE COURT: All right. So, first of  
7 all, I'm not going to reopen the adversary proceeding  
8 because I don't think we need to do that if the  
9 motion to amend the dismissal order is denied, and  
10 it's going to be denied.

11 Rather than demonstrate that this is a  
12 valid reaffirmation agreement, Eagle Fence has taken  
13 the position that we don't care about that, and that  
14 really -- I didn't understand part of the argument.  
15 There was a lot in the argument about whether the  
16 settlement had to be approved under Rule 9019, but no  
17 one has ever asserted that it did.

18 The question to me is whether there  
19 would be grounds under Rule 60(b)(6) to vacate the --  
20 I should say to alter the dismissal order. And I  
21 don't think amending the dismissal order is going to  
22 help. What you need is a judgment, and you don't  
23 have a judgment. With the dismissal of the  
24 adversary, it's as if that adversary had never really  
25 been filed.

1                   You have not made out a ground under  
2 Rule 60(b)(6), which is a very hard remedy to invoke.  
3 I mean, under Rule 60(b) ordinarily you are entitled  
4 to relief only in exceptional circumstances. It's an  
5 extraordinary remedy. And the case law is clear  
6 that, as the Seventh Circuit said in the Neuberg  
7 case, 123 F.3d 951, Rule 60(b)(6) relief is even  
8 rarer because that provision represents "an even more  
9 highly circumscribed exception in a rule already  
10 limited to exceptional circumstances."

11                  So you really have to have something  
12 extraordinary, and we don't have that here. I mean,  
13 the reason that this happened was that the lawyer who  
14 handled this for Eagle Fence made a mistake. The  
15 lawyer should have had a judgment entered. These  
16 kinds of matters that are settled always result in  
17 judgments, even though there's a settlement agreement  
18 typically entered as well.

19                  And it's clear under the case law that  
20 lawyer error is not grounds for relief under Rule  
21 60(b)(6). So you would have me go back and change  
22 what happened here because the lawyer representing  
23 Eagle Fence did not have a judgment entered, as he  
24 should have. That's not a ground. That's not  
25 exceptional circumstances.

1                   The response to the motion to  
2 enforce the discharge injunction says, well, the  
3 whole question of whether this is a reaffirmation  
4 agreement or not doesn't apply because this is a  
5 non-dischargeable debt. Well, the answer is  
6 it's discharged until it's determined to be  
7 non-dischargeable. But it was never determined  
8 to be non-dischargeable here because no judgment was  
9 entered, and it's too late to do this now.

10                  The grounds were grounds under  
11 Section 524(c) that had to be asserted in the  
12 bankruptcy case. They were asserted but then,  
13 again, the adversary was dismissed, and so it's  
14 as if there had never been an adversary proceeding.  
15 So what we have in fact is a discharged debt. The  
16 whole Rule 9019 question to me is a red herring.  
17 No one has ever suggested that the settlement had  
18 to be approved. The problem is that there's no  
19 judgment.

20                  In the absence of a judgment  
21 determining the debt not to be discharged, an  
22 agreement by a debtor with a creditor that a debt  
23 will be excepted from the discharge is a  
24 reaffirmation of the debt, and this simply didn't  
25 qualify as a reaffirmation agreement.

1                   So, I'll deny the motion to reopen the  
2 adversary proceeding because I'm going to deny the  
3 motion to alter or amend the dismissal order. It  
4 should have been a motion to vacate, as I said. And  
5 I'll grant the motion to enforce the discharge  
6 injunction.

7                   Now, do I have an order? I don't have  
8 an order, so I'm going to need an order.

9                   (Discussion between court and clerk.)

10                  THE COURT: That's really about  
11 all they ask for, and so I'll simply enforce  
12 the discharge injunction and make it clear that  
13 Eagle Fence can't continue to try to collect this  
14 judgment.

15                  MS. ADAMS: Okay.

16                  THE COURT: That will be the order.

17                  MS. DeROUSSE: All right. Thank you,  
18 Your Honor.

19                  MS. ADAMS: Thank you.

20                  So can I have draft order to  
21 follow?

22                  THE COURT: No, I'll take care of  
23 it.

24                  MS. ADAMS: Oh, you're going to do  
25 it?

1 THE COURT: I'll prepare the order.

2 MS. ADAMS: Okay. Thank you, Your  
3 Honor.

4 (Which were all the proceedings had in  
5 the above-entitled cause, March 13,  
6 2020, 11:15 a.m.)

7 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY  
8 THAT THE FOREGOING IS A TRUE AND ACCURATE  
TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-  
ENTITLED CAUSE.

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